

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT SHELDON,

Plaintiff-Appellee,

v

DAVID LITTLE and LINDA LITTLE,

Defendants,

and

CRAWFORD COUNTY ROAD COMMISSION,

Defendant-Appellant.

UNPUBLISHED
November 7, 2006

No. 270399
Crawford Circuit Court
LC No. 05-006774-NO

Before: Ford Hood, P.J., and Murray and Donofrio, JJ.

PER CURIAM.

Defendant-appellant appeals as of right from the circuit court's order denying its motion for summary disposition predicated on governmental immunity. Because the complained of condition is not part of the roadway designed for vehicular travel, we reverse. This case is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiff was leaving private property on his motorcycle when, approaching the road from the private driveway, he stopped his motorcycle such that its front tire came to rest on a raised gravel berm that separated the driveway from the road. The evidence indicates that the raised gravel was the result of scraping, a road maintenance procedure. The property owners, the Little's, welcomed the gravel berm on the private drive to keep road water off the drive. Plaintiff asserts that the gravel caused his front wheel to turn, thus causing the motorcycle to fall on him, and resulting in serious injuries.

Plaintiff brought suit, naming as defendants the owners of the private driveway, and the road commission responsible for maintenance of the road. The latter moved for summary disposition, citing governmental immunity. The trial court denied the motion on the ground that "reasonable minds could differ as to whether or not that berm would be considered part of the improved portion of the roadway designed for vehicular travel. This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*,

233 Mich App 685, 688; 593 NW2d 215 (1999). MCR 2.116(C)(7) authorizes motions for summary disposition premised upon “immunity granted by law” A motion for summary disposition based on governmental immunity is decided by examining all documentary evidence submitted by the parties, accepting all well-pleaded allegations as true, and construing all evidence and pleadings in the light most favorable to the nonmoving party. *Tarlea v Crabtree*, 263 Mich App 80, 87; 687 NW2d 333 (2004).

Governmental agencies in this state are generally immune from tort liability for actions taken in furtherance of governmental functions. MCL 691.1407(1). However, the immunity statute includes an exception for public highways, according to which “each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1402(1). The statute further provides that the “duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include . . . any . . . installation outside of the improved portion of the highway designed for vehicular travel.” *Id.* The statutory grant of immunity to governmental agencies is broad, and the highway exception must be construed narrowly. See *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000). Accordingly, “[t]he state and county road commissions’ duty, under the highway exception, is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage.” *Id.* at 183.

The shoulder of a road does not come under the highway exception to governmental immunity, because “a shoulder, unlike a travel lane, is not designed for vehicular travel.” *Grimes v Dep’t of Transportation*, 475 Mich 72, 91; 715 NW2d 275 (2006). In this case, the photographic evidence on which the parties rely shows where road grading operations left ridges of gravel at the extreme edges of the roadway. In the case of the driveway on which plaintiff’s motorcycle fell, the effect is to establish a lower roadway against a slightly elevated driveway. The X pinpointing the location of the alleged defect appears on what is plainly part of the elevation, which is thus structurally linked to the driveway, and separated from the roadway. We therefore conclude that the alleged defect was not part of the structure of the public roadbed surface designed for vehicular travel. Accordingly, the trial court erred in denying defendant-appellant’s motion for summary disposition predicated on governmental immunity.¹

Reversed. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

¹ We are mindful of defendant-appellant’s responsibility for creating what may have been a dangerous condition, and of plaintiff’s misfortune in the matter, but also that, because of the nature of governmental immunity, “some tort claims, against a governmental agency, will inevitably go unremedied.” *Nawrocki, supra* at 156-157.